

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring the Golden Eagle Nos. 1 through 18 mining claims abandoned and void. N MC 123674, N MC 123675, and N MC 142078 through N MC 142093.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Under 43 CFR 3833.0-5(m), "timely filed" means being filed within the time period prescribed by law, or received by January 19 after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law. A proof of labor for a mining claim is timely filed when it was received by January 19 at the Nevada State Office and was in an envelope bearing a clearly dated postmark dated Dec. 26, which is within the period prescribed by law, and BLM's decision declaring the claim abandoned and void is properly reversed.

APPEARANCES: Patrick J. McClain, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Patrick J. McClain (appellant) has appealed from the April 8, 1987, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Golden Eagle Nos. 1 through 18 mining claims (N MC 123674, N MC 123675, and N MC 142078 through N MC 142093) abandoned and void. BLM's decision stated that copies of appellant's proofs of labor for these claims were not received in the proper BLM office on or before December 30, 1986.

Under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim

is required to file evidence of annual assessment work or a notice of intention to hold the mining claim prior to December 31 of each year. It is well established that failure to file within the prescribed period results in the claim being deemed abandoned and void. United States v. Locke, 471 U.S. 84 (1985). See 43 CFR 3833.2.

The postmark on the envelope containing appellant's proofs of labor indicates that it was mailed on December 26, 1986. The envelope was addressed to BLM's Las Vegas District Office and was received there on December 29. Deeming this filing not to be in the proper office, the District Office forwarded appellant's proofs of labor to BLM's Nevada State Office in Reno where it was stamped in as arriving at 7:30 a.m., December 31, 1986. BLM's April 8 decision declared appellant's claims abandoned because the "Proof of Labor was not received in the proper BLM office on or before December 30, 1986."

[1] Departmental regulation 43 CFR 3833.0-5(m) makes the following provision for filing documents required by 43 U.S.C. § 1744 (1982):

(m) "Filed or file" means being received and date stamped by the proper BLM office. For the purpose of complying with § 3833.2-1 of this title, "timely filed" means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law.

Appellant's filing satisfies the requirements of this provision: it was "received by January 19th" at the State Office and was "in an envelope bearing a clearly dated postmark affixed by the United States Postal Service" dated December 26, which is "within the period prescribed by law." Moreover, it is certain that the letter was transmitted from Las Vegas to the State Office during this period, as it arrived at the State Office on the first day after the end of the period. Compare 43 CFR 4.401(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

David L. Hughes
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge